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April 4, 2006

**Implications of the Hamas Election Victory**

**Next Steps in the U.S.-Palestinian Relationship**

***Executive Summary***

- On January 25, 2006, the Palestinian people went to the polls to elect representatives for their legislative body, called the Palestinian Legislative Council. The Hamas party, which the United States has labeled a “foreign terrorist organization,” defeated Fatah, the party of Yasser Arafat and current President Abbas.
- Hamas won 56 percent of the seats, and, as a result, Hamas leader Ismail Haniyeh became the new prime minister. His cabinet was sworn in on March 29, 2006.
- The United States has stated its position that Hamas is expected to form a government committed to nonviolence, recognition of Israel, and acceptance of previous agreements and obligations, including the “Roadmap.”
- If the government formed by Hamas fails to adhere to these commitments, Congress should make clear its displeasure with Hamas’s behavior. However, the United States alone may have little influence over the new government’s behavior.
- One option for Congress is to withhold financial assistance to the Palestinians. In fact, multiple provisions of U.S. law already prohibit transactions with persons who support terrorism.
  - Two bills introduced, the Palestinian Compliance Act of 2006 (S. 2237) and the Palestinian Anti-Terrorism Act of 2006 (S. 2370), address this.
  - The Palestinian Anti-Terrorism Act of 2006 also suggests more substantive restrictions on the U.S.-Palestinian relationship, such as deeming the Palestinian territory a terrorist sanctuary, or restricting visas for Palestinian officials.
- It is unclear whether withholding financial assistance alone will cause a change in Hamas’s behavior, as the United States is not the only economic actor in the area.
  - Even if the United States were to cut off its financial assistance, other actors, such as the EU, World Bank, Saudi Arabia, Iran, or individual terrorist financiers, could make up the difference.
- Congress still should consider cutting off financial assistance because it does send a credible signal of displeasure, and it would be morally unacceptable to transfer financial assistance to a terrorist group.

## Introduction

On January 25, 2006, the Palestinian people went to the polls to elect representatives for the Palestinian legislature, known as the Palestinian Legislative Council (“PLC”). It was the first time in 10 years that elections were held for that entity. When the votes were counted, the Hamas party/terrorist organization handily defeated Fatah, the party of Yasser Arafat and current President Mahmoud Abbas. Hamas won a majority of the seats in the Council, even though it did not win a majority of the votes cast. This paper provides a brief history of the Palestinian Authority, examines the results of the recent legislative elections, and then reviews potential U.S. policy options in response to the Palestinian people’s electoral choice.

## Background

### *Palestinian Authority: Creation of the Oslo Peace Process*

In 1993, the Palestine Liberation Organization (“PLO”) and Israel secretly negotiated the Oslo Accords.<sup>1</sup> The Accords were a culmination of a series of secret and public meetings, dating from the Madrid Conference of 1991, in particular. They were signed on August 20, 1993, with a subsequent public ceremony at the White House on September 13, 1993, attended by Yasser Arafat and Yitzhak Rabin. The Oslo Accords granted the Palestinians the right of self-governance in the Gaza Strip and the West Bank. The Palestinian Authority (“PA”) was the structure created to administer that self-governance.

The Oslo Accords were the first formal recognition of the PLO as the legitimate representative of the Palestinian people by Israel, and the first recognition of the state of Israel by the PLO. In the September 9, 1993 exchange of letters on this mutual recognition, the PLO also committed itself to a peaceful resolution of the conflict, renounced the use of terrorism and other acts of violence, and undertook to amend provisions of the PLO Charter hostile to Israel.

Because the PLO had failed to accomplish its commitments after almost nine years, on June 24, 2002, President Bush outlined a new approach to achieve these goals, which became known as the “Roadmap.” The Roadmap envisions “two states, living side by side in peace and security.”<sup>2</sup> The very first step in the Roadmap required the Palestinians to appoint a prime minister: they appointed Mahmoud Abbas on March 19, 2003, and shortly thereafter, the Department of State released the details of the Roadmap.<sup>3</sup> The Roadmap is comprised of three phases, the first of which requires the Palestinian leadership to issue an unequivocal statement reiterating Israel’s right to exist and calling for an immediate and unconditional ceasefire to violence against Israelis. Also as part of this step, the Palestinian Authority security apparatus is to begin sustained, targeted, and effective operations aimed at confronting all those engaged in terror and dismantling terrorist capabilities and infrastructure.

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<sup>1</sup> Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr-P.L.O., 32 I.L.M. 1525 [“Oslo I”].

<sup>2</sup> George W. Bush, President Bush Calls for New Palestinian Leadership, Speech in the Rose Garden, June 24, 2002.

<sup>3</sup> State Department, A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict, Press Statement, Apr. 30, 2003, available at <http://www.state.gov/r/pa/prs/ps/2003/20062.htm>.

The Palestinian Authority was designed to be an interim structure to administer the West Bank and Gaza Strip in the transition while a permanent settlement was negotiated between Israel and the Palestinians. The Palestinian Authority evolved into a more formal governmental structure under the leadership of Yasser Arafat, who was elected President in 1996. From the establishment of the Palestinian Authority until the death of Yasser Arafat in November 2004, only one election took place—the election of Arafat as President and the accompanying election for the Legislative Council. All other elections were postponed for various reasons. At the time of his death, Arafat was simultaneously the (1) elected President of the Palestinian Authority, (2) Chairman of the Palestine Liberation Organization, and (3) recognized leader of the Fatah political party.<sup>4</sup>

Presidential elections for Arafat's successor were held on January 9, 2005. Mahmoud Abbas, the then-former prime minister, won the election with 67 percent of the vote.<sup>5</sup> The more recent elections of January 25, 2006 were for the Palestinian Legislative Council.

### **Hamas: Winner of the Majority of the Legislature's Seats**

Much like the Palestinian Authority itself, the Palestinian Legislative Council has its origins in the Oslo negotiation process.<sup>6</sup> The second Oslo Accord, completed on September 28, 1995, addressed the creation and constitution of the legislative body in significant detail, and specifically envisioned that Israel would transfer powers and responsibilities for administering the West Bank and Gaza to a Palestinian "Council."<sup>7</sup> The Palestinian Legislative Council is the "legislative arm of the PA and confirms the Prime Minister and approves all government cabinet positions."<sup>8</sup> It was designed to be the "most comprehensive expression of Palestinian autonomy."<sup>9</sup>

The January 2006 election was a mixed electoral system for 132 seats, in which half of the seats were awarded to individuals, and the other half were awarded to a political party by proportional representation.<sup>10</sup> Accordingly, voters received two ballots. The first ballot was to conduct the vote for individuals under a regional district system. Each of Palestine's 16 electoral districts (11 in the West Bank and 5 in the Gaza Strip) is allocated a certain number of seats in the legislature based on population numbers. For example, Bethlehem is allocated four seats in the PLC. The ballot contained the names of individuals competing for those seats, and the voter selected as many names as there are seats allocated to his region.

The second ballot was for the election by party. In this part of the election, each party provides a national list of candidates. The voter selects one list among the competing parties. As long as a list obtains at least 2 percent of the vote, that party is allocated a number of seats in

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<sup>4</sup> *Arafat's Succession*, p. CRS-2, CRS rpt RS21965, Nov. 12, 2004.

<sup>5</sup> *Palestinian Elections*, p. CRS-9, CRS Report RL33269, Feb. 28, 2006.

<sup>6</sup> See Nathan J. Brown, *Palestinian Politics After the Oslo Accords*, p. 96 (Univ. of California Press, 2003).

<sup>7</sup> Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, art. I, Sept. 28, 1995, 36 I.L.M. 551 (1997) [Oslo II].

<sup>8</sup> *Palestinian Elections*, at p. CRS-10.

<sup>9</sup> Nathan J. Brown, *Palestinian Politics After the Oslo Accords*, p. 97.

<sup>10</sup> Palestinian Legislative Council, Elections Law No. 9 of 2005, art. 3, available at [http://www.elections.ps/pdf/electoral\\_law\\_1\\_english.pdf](http://www.elections.ps/pdf/electoral_law_1_english.pdf).

proportion to the number of votes the list receives. For example, if the percentage of votes cast for one party resulted in six seats for that party, the first six names on the list are given seats in the legislature.<sup>11</sup> With 77 percent of eligible voters<sup>12</sup> participating in the elections, Hamas won 74 of the 132 PLC seats—56 percent.<sup>13</sup>

PLC members were sworn in on February 18, 2006, and, on February 21, 2006, PA President Abbas officially authorized Hamas leader Ismail Haniyeh to become the new prime minister and to form a cabinet.<sup>14</sup> Haniyeh had up to five weeks from that date to form a government, and Haniyeh and his cabinet members were sworn in on March 29, 2006.

### **Hamas: Winning 50 Percent of the Seats, But Not 50 Percent of the Votes**

Hamas attained more than 50 percent of the seats in the PLC but with votes from less than half of the voting Palestinians. There may be various explanations for this. With respect to the policy positions of the candidates, “opinion polls and detailed analysis of the balloting suggest the vote for Hamas was more a protest against Fatah’s governance record than a vote of support for Hamas’s political agenda.”<sup>15</sup> Also, Hamas may have effectively exploited the construct and idiosyncrasies of the balloting system used in the election.<sup>16</sup> For example, Fatah fielded numerous candidates in the individual district races, whereas Hamas had a disciplined party structure in that it generally limited its number of candidates to the number of seats available to that district. In this regard, multiple Fatah candidates split votes among voters who wanted to vote for a Fatah candidate, while voters who wished to vote for a Hamas candidate were limited in their vote to a fewer number of candidates such that the Hamas vote was not split amongst itself.<sup>17</sup>

### **Reaction to the Hamas victory**

The United States, in conjunction with other key members of the international community, has stated its position that Hamas is expected to form a government that supports the Palestinians’ prior commitments to the peace process. Specifically, the so-called Quartet (United States, Russia, European Union, and the United Nations) has called upon any future Palestinian government to commit to “nonviolence, recognition of Israel, and acceptance of previous agreements and obligations, including the Roadmap.”<sup>18</sup> It further noted that “future assistance to

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<sup>11</sup> Article Four of the election law provides that each list must include at least one woman in the first three names, at least one woman in the next four names, and at least one woman in each of the five names that follow in the list.

<sup>12</sup> Eligible voters are all Palestinian residents of Jerusalem, West Bank, and Gaza who are at least 18 years old and who have registered to vote.

<sup>13</sup> *Palestinian Elections*, at pp. CRS-10-11.

<sup>14</sup> Greg Myre, Hamas is Formally Asked to Form a New Government, N.Y. Times A10, Feb. 22, 2006.

<sup>15</sup> C. David Welch, Prepared Statement of the Assistant Secretary of State for Near Eastern Affairs before the House International Relations Committee hearing regarding United States Policy Toward the Palestinians in the Aftermath of Parliamentary Elections, March 2, 2006.

<sup>16</sup> C. David Welch.

<sup>17</sup> See Nathan J. Brown, *Aftermath of the Hamas Tsunami*, pp. 2-3, available at <http://www.carnegieendowment.org/files/BrownHamasWebCommentary.pdf> (asserting that “the electoral triumph of Hamas owes far more to its discipline and organization than to its platform”).

<sup>18</sup> Quartet Statement on the Situation in the Middle East, Jan. 30, 2006, available at <http://www.state.gov/r/pa/prs/ps/2006/60068.htm>. See also Tom Casey, Remarks of the United States Department

any new government would be reviewed by donors against that government's commitment to [these] principles.”<sup>19</sup> In a March 30, 2006 statement, the Quartet “noted with grave concern that the new government has not committed to [these] principles.”<sup>20</sup> In that same statement, the Quartet reiterated that Hamas's failure to adhere to these principles will inevitably have an effect on direct assistance to the Palestinian government and its ministries.<sup>21</sup>

President Bush has questioned whether Hamas, as it is currently positioned, could be a true partner for peace in the region. He stated that a partner for peace cannot “advocate the destruction of a country,” and cannot have “an armed wing.”<sup>22</sup> In the State of the Union Address, the President called upon Hamas to disarm this unofficial security wing.<sup>23</sup> The immediate reaction of both houses of Congress was to pass a non-binding resolution, which expressed “that no United States assistance should be provided directly to the Palestinian Authority if any representative political party holding a majority of parliamentary seats within the Palestinian Authority maintains a position calling for the destruction of Israel.”<sup>24</sup>

President Bush has urged President Abbas to remain in office, despite Fatah's electoral defeat.<sup>25</sup> It is crucial to remember that President Abbas has significant separate and independent powers as President under the PA system. He is the main international interlocutor of the Palestinian people, and he supports the two-state solution and negotiation process with Israel.<sup>26</sup>

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of State Acting Spokesman at the Daily Press Briefing, March 13, 2006 (“It is clear, however, that the international community, through the Quartet statement on January 30th, has made it clear exactly what we want to see from that government, including a recognition of Israel's right to exist, [and] maintenance of all existing agreements that the Palestinian Authority has signed with Israel.”).

<sup>19</sup> Quartet Statement on the Situation in the Middle East, Jan. 30, 2006.

<sup>20</sup> Quartet Statement on the Situation in the Middle East, March 30, 2006, *available at* <http://www.state.gov/p/nea/rls/63910.htm>.

<sup>21</sup> Quartet Statement on the Situation in the Middle East, March 30, 2006.

<sup>22</sup> George W. Bush, Press Conference of the President, Jan. 26, 2006 (“I don't see how you can be a partner in peace if you advocate the destruction of a country as part of your platform. And I know you can't be a partner in peace if you have a—if your party has got an armed wing.”).

<sup>23</sup> George W. Bush, State of the Union Address, Jan. 31, 2006.

<sup>24</sup> S. Con. Res. 79. The Senate passed the resolution by unanimous consent on February 1, 2006, and the House passed the resolution by a vote of 418-1 on February 15, 2006.

<sup>25</sup> George W. Bush, Press Conference of the President, Jan. 26, 2006.

<sup>26</sup> Mahmoud Abbas, speech of the Chairman of the Executive Committee of the PLO and President of the Palestinian National Authority upon the opening session of the PLC, Feb. 18, 2006 (“Let us live in two neighboring states. . . . There is a Palestinian partner who is ready to sit at the negotiation table with an Israeli partner so as to reach a solution that is based on international legitimacy, the Arab Peace Initiative, and the Road Map.”) *See also* Mahmoud Abbas, Inauguration Address, Jan. 15, 2005 (“Peace can only be achieved by working together to reach a permanent status solution that deals with all of the outstanding issues, and which turns a new page on the basis of two neighboring states. . . . I say to the Israeli leadership and to the Israeli people: we are two peoples destined to live side by side, and to share this land between us. . . . Let us start implementing the Road Map.”).

## *U.S. Law Implicated*

The U.S. government has designated Hamas a “foreign terrorist organization.”<sup>27</sup> This designation implicates the multiple provisions of U.S. law that prohibit transactions with persons who commit or support terrorism. For example, the Foreign Assistance Act prohibits assistance to any country if “the government of that country has repeatedly provided support for acts of terrorism.”<sup>28</sup> Also, in direct response to the terrorist attacks of September 11, Executive Order 13,224 specifically prohibits transactions with entities supporting terrorism.<sup>29</sup>

Specific to this situation, it is also U.S. policy to prohibit transactions with terrorist groups that threaten the Middle East Peace Process, namely Hamas. President Clinton issued Executive Order 12,947 on January 23, 1995, prohibiting such transactions, and Hamas was listed as subject to the Order.<sup>30</sup> President Bush recently reiterated the continuing vitality of this sanctions regime.<sup>31</sup>

Finally, Congress already generally acts during the annual appropriations process to prohibit direct funding to the Palestinian Authority, although Congress usually also authorizes the President to waive that prohibition in the interest of national security. For example, Section 550 of the Foreign Operations Appropriations Act of Fiscal Year 2006 contained such a prohibition and waiver authority.<sup>32</sup> To date, the President has only used this waiver authority four times, most recently in May 2005, to provide direct assistance in the amount of \$50 million to the Palestinian Authority.<sup>33</sup> These funds were to be used to help support the Palestinian people upon the Israeli disengagement from the Gaza Strip, specifically for new housing and infrastructure projects there.<sup>34</sup>

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<sup>27</sup> *E.g.* 31 C.F.R. Chptr. V, Appndx. A (designating Hamas to be subject to various sanctions regimes applicable to terrorists). *See also* Department of State Office of the Coordinator for Counterterrorism, Redesignation of Foreign Terrorist Organization, 66 Fed. Reg. 51,088, 51,089 (Oct. 5, 2001) (re-designating Hamas as a Foreign Terrorist Organization). The European Union, which originally had designated only Hamas’s “terrorist wing” as a terrorist entity, subsequently designated Hamas in its entirety as a terrorist organization. Council of the European Union, Common Position 2003/651/CFSP, Sept. 12, 2003, 2003 O.J. (L 229) 42 (repealing Common Position 2003/482/CFSP, 2003 O.J. (L 160) 100, to provide that the application of the EU’s specific measures to combat terrorism shall apply to Hamas, and not just Hamas-Izz al-Din al-Qassem).

<sup>28</sup> Foreign Assistance Act of 1961, as amended, § 620A, codified at 22 U.S.C. § 2371.

<sup>29</sup> Exec. Order 13,224, 66 Fed. Reg. 49,079 (Sept. 25, 2001). 31 C.F.R. Parts 594-97 are the implementing regulations for this Executive Order.

<sup>30</sup> Exec. Order 12,947, 60 Fed. Reg. 5,079 (Jan. 25, 1995).

<sup>31</sup> George W. Bush, Notice of Continuation of the National Emergency With Respect to Terrorists Who Threaten to Disrupt the Middle East Peace Process, 71 Fed. Reg. 3,405 (Jan. 20, 2006).

<sup>32</sup> Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, § 550, Pub. L. No. 109-102, 119 Stat. 2172, 2217. *See also* Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, § 552, codified as part of the Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, 118 Stat. 3, 188 (Jan. 23, 2004).

<sup>33</sup> *U.S. Aid to the Palestinians*, p. CRS-4, CRS Report RS22370 (Feb. 2, 2006).

<sup>34</sup> George W. Bush, Remarks of the President in the Rose Garden Upon Welcoming Palestinian President Abbas to the White House, May 26, 2005.



## *U.S. Conducting Review of Palestinian Assistance Programs*

U.S. economic assistance to the Palestinian people generally takes the form of assistance through USAID (United States Agency for International Development) contractors and Non-Governmental Organizations (“NGOs”).<sup>35</sup> After the Hamas election victory, the United States government began to undertake a thorough interagency review of assistance efforts involving the Palestinians, namely assistance to the Palestinian people and any direct assistance to the Palestinian Authority itself. As part of that review effort, the Palestinian Authority has agreed to a U.S. request to return the unexpended balance of the direct funding provided to the PA in 2005, which is a balance in excess of \$45 million.<sup>36</sup>

Assistant Secretary of State C. David Welch has stated that this review is in progress, and has outlined the principles guiding the review.<sup>37</sup> The first principle is that the United States will not provide assistance to the party Hamas. Next, the basic humanitarian needs of the Palestinian people will be met. Finally, the United States will send a clear signal to the Palestinians indicating exactly what is expected of them to secure financial support.

Assistant Secretary Welch has stated that it is critical that Hamas receive a consistent message that “it must commit to principles of ending violence and terror, recognizing Israel, and accepting previous agreements.”<sup>38</sup> To this end, the United States has encouraged members of the international community to review their assistance efforts based on the principles outlined by the Quartet. Israel decided that it, too, would approach the international community to request that countries discontinue financial assistance to the PA, but not discontinue humanitarian assistance provided directly to the Palestinian people.

For itself, Israel, not surprisingly, decided on February 19, 2006, after the first session of the new Palestinian Legislative Council, that Israel would not continue to transfer money to the Palestinian Authority, namely the transfer of certain taxes and customs duties as per the 1994 Gaza-Jericho Agreement.<sup>39</sup> Yet, for its part, the European Union announced on February 27, 2006—prior to Hamas taking control of the Palestinian Authority—that it would release \$142 million in both humanitarian aid to the Palestinians and direct aid to the PA.<sup>40</sup> The EU explained that this transfer was for emergency purposes, so that the basic needs of the Palestinian population would be met, and that the “caretaker” government could pay the salaries of its personnel while a new government is formed. The EU did further state, however, that this

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<sup>35</sup> C. David Welch.

<sup>36</sup> C. David Welch.

<sup>37</sup> C. David Welch.

<sup>38</sup> C. David Welch.

<sup>39</sup> Cabinet Communique, Feb. 19, 2006, *available at*

<http://www.mfa.gov.il/MFA/Government/Communiques/2006/Cabinet+Communique+19-Feb-2006.htm>. Under the 1994 Gaza-Jericho Agreement, Israel collects taxes and customs duties for the Palestinians on imports that came through Israeli ports whose final destination was a Palestinian area, and then transfers those funds to the PA each month. Israel-Palestine Liberation Organization Agreement on the Gaza Strip and the Jericho Area, Protocol on Economic Relations between the Government of the State of Israel and the PLO, Representing the Palestinian People (Annex IV), May 4, 1994, 33 I.L.M. 622, 696 (1994). Israel transferred the January 2006 collection, but later announced that it would not make future transfers.

<sup>40</sup> European Union, Commission Unveils €20 Million Package for the Palestinians, Press Release IP/06/235, Feb. 27, 2006.

decision “is independent from any future decisions on support for the incoming Palestinian Authority, which will be reviewed once the new government is in place, in the light of the principles set out in the Quartet statement.”<sup>41</sup>

## **Policy Options for Congress**

If the government formed by Hamas fails to adhere to the prior commitments made by the Palestinian Authority, Congress should make clear its displeasure with Hamas’s behavior. In terms of influencing the new government’s behavior, however, it should be acknowledged that the U.S. government has limited options. It may be more effective for the Palestinian people, who just elected this government, to demand that their government act as a responsible member of international society. The scope of this paper, however, will only consider the limited options available to Congress to use as leverage, including two bills that withhold financial assistance. One of these bills would also enact more substantive restrictions on the U.S.-Palestinian relationship.

### **Efficacy of Withholding Financial Assistance**

The EU donation, noted previously, suggests that withholding financial assistance to the Palestinians may have a negligible impact on Hamas’s behavior, as the United States is not the only economic actor in the area. According to the Congressional Research Service, the United States was fourth in direct assistance to the PA in 2004, after the EU, the World Bank, and Saudi Arabia.<sup>42</sup> There is also a possibility that the difference would be made up by still other economic actors, such as the governments of wealthy Arab Gulf states or Iran, or individual terrorist financiers. Thus, even if the United States were to cut off its aid to the area, the United States cannot control the donation patterns of other donors.

It is unclear whether withholding financial assistance will cause a change in Hamas’s behavior, but there are still reasons to do so. First, it would make a point. It would express in a tangible way official U.S. displeasure with Hamas’s current behavior. Related to that, it is a credible way to demonstrate resolve on the issue and reinforce commitment to the norm that the United States will not work with terrorists. Finally, it would be morally unacceptable for the United States to transfer financial assistance to an entity that has intentionally targeted civilians in terrorist attacks. It is likely the case, however, that the United States will have to consider additional options beyond financial levers to influence the behavior of Hamas.

### **Possible Congressional Action**

In keeping with U.S. law and policy, Congress may wish to consider legislative action to address a Hamas-led Palestinian Authority. Two bills introduced on the matter, the Palestinian Compliance Act of 2006 (S. 2237) and the Palestinian Anti-Terrorism Act of 2006 (S. 2370), both contemplate the withholding of financial assistance. The latter bill also provides other substantive sanctions.

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<sup>41</sup> European Union Press Release, Feb. 27, 2006.

<sup>42</sup> *U.S. Aid to the Palestinians*, at p. CRS-5.



The Palestinian Compliance Act of 2006 (S. 2237)<sup>43</sup> uses financial assistance as a means to deliver the message of the Quartet's principles to the Palestinians. The bill mainly addresses the President's waiver authority to provide direct assistance to the PA. Currently, if the President makes use of the waiver, he need only certify in writing that waiving the prohibition on direct assistance to the Palestinian Authority "is important to the national security interests of the United States."<sup>44</sup> As part of the waiver, the President is to detail "the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure."<sup>45</sup> The Palestinian Compliance Act would amend this waiver authority to provide that the President certify that the Palestinian Authority has essentially taken steps consistent with its international obligations and prior commitments, as noted in the Quartet statement, namely that the Palestinian Authority has:

1. denounced terrorism and expressed a commitment to combating terrorism;
2. committed to disarming terrorists and disarming and dismantling terrorist networks, groups, and entities;
3. committed to eliminating the incitement of terrorism and the commemoration of terrorists in Palestinian society;
4. pledged to uphold the human rights, civil liberties, and religious liberties of the Palestinian people;
5. recognized Israel's right to exist and taken appropriate steps to amend "The Covenant of the Islamic Resistance Movement" dated August 18, 1988, and to delete statements that are hostile to Israel and that support the use of violence;
6. renounced the use of violence as a means to resolve disputes between entities; and
7. committed to prosecuting those individuals, entities, and organizations that have committed acts of terrorism.<sup>46</sup>

Like S. 2237, the Palestinian Anti-Terrorism Act of 2006 (S. 2370)<sup>47</sup> restricts direct financial assistance to the Palestinian Authority, and it also restricts indirect assistance through NGOs to the West Bank and Gaza areas. It restricts financial assistance to the Palestinian Authority to a period in which the President can certify to Congress the following things:

1. No ministry, agency, or instrumentality of the Palestinian Authority is effectively controlled by Hamas, unless Hamas has:
  - a. publicly acknowledged Israel's right to exist as a Jewish state; and

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<sup>43</sup> Senator Santorum, with Senators Kyl and Nelson (FL) as original co-sponsors, introduced the Palestinian Compliance Act of 2006, S. 2237, on February 1, 2006. On April 3, 2006, the bill had five co-sponsors. The bill has been referred to the Committee on Foreign Relations.

<sup>44</sup> Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, § 550(b), Pub. L. No. 109-102, 119, Stat. 2172, 2217.

<sup>45</sup> Id. at § 550(d).

<sup>46</sup> S. 2237, § 3.

<sup>47</sup> Senator McConnell introduced the Palestinian Anti-Terrorism Act of 2006, S. 2370, on March 6, 2006. On April 3, 2006, the bill had 66 cosponsors. The bill has been referred to the Committee on Foreign Relations. This bill is roughly based on the House version of the bill, H.R. 4681, which Representative Ileana Ros-Lehtinen introduced on February 1, 2006. On April 3, 2006, the bill had 202 cosponsors, and it was referred to the House Committee on International Relations, the Committee on the Judiciary, and the Committee Financial Services.

- b. committed itself and is adhering to all previous agreements and understandings with the United States Government, with the Government of Israel, and with the international community, including the Roadmap.
2. The Palestinian Authority has made demonstrable progress toward:
- a. purging from its security services individuals with ties to terrorism;
  - b. dismantling all terrorist infrastructure within its jurisdiction, confiscating unauthorized weapons, arresting and bringing terrorists to justice, destroying unauthorized arms factories, thwarting and preempting terrorist attacks, and fully cooperating with Israel's security services;
  - c. halting all anti-American and anti-Israel incitement in Palestinian Authority-controlled electronic and print media and in schools, mosques, and other institutions it controls, and replacing educational materials, including textbooks, with materials that promote peace, tolerance, and coexistence with Israel;
  - d. ensuring democracy, the rule of law, and an independent judiciary, and adopting other reforms such as ensuring transparent and accountable governance; and
  - e. ensuring the financial transparency and accountability of all government ministries and operations.

The President must certify the aforementioned every six months. The Act also provides a limited waiver authority on this limitation.<sup>48</sup>

The bill also requires that financial assistance provided to NGOs for the West Bank and Gaza be subject to the same certifications described above. Exceptions are made for basic human needs (e.g., food, water, medicine, and sanitation), for promotion of democracy and human rights, and for furthering the national security interests of the United States. The bill also demands audits of contractors of participating NGOs.

Further, the bill suggests that the President should direct the U.S. Executive Director at each international financial institution (e.g., World Bank or IMF) to discourage that institution from providing assistance to the Palestinian Authority during a time in which the certification described above cannot be made.

During a time in which the certification described above cannot be made, the Palestinian Anti-Terrorism Act of 2006 also seeks to enact more substantive restrictions on the United States-Palestinian relationship:

- Congress expresses its position that territory controlled by the Palestinian Authority should be deemed a terrorist sanctuary,<sup>49</sup> which has implications for a variety of laws, policies, and programs.

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<sup>48</sup> S. 2370, § 2. The Act provides that the President may only waive the certification requirement “with respect to the administrative and personal security costs of the Office of President of the Palestinian Authority and for activities of the President of the Palestinian Authority to promote democracy and the rule of law” if the President of the United States certifies that (1) it is in the national security interests of the United States to provide such assistance; and (2) the President of the Palestinian Authority and the President’s party are not affiliated with Hamas or any other foreign terrorist organization.

<sup>49</sup> S. 2370, § 4.

- Visas should be limited to the President of the Palestinian Authority and his or her personal representatives, and only provided to such individuals if those individuals are not affiliated with Hamas or any other foreign terrorist organization.<sup>50</sup>
- The travel of Palestinian officials and representatives who are stationed at the United Nations should be limited to a 25-mile radius of the United Nations headquarters building.<sup>51</sup>
- The PA may not establish or maintain an office or other facility within the United States.<sup>52</sup>
- The Department of State may not use funds for the purposes of negotiating with Hamas or any other Palestinian terrorist organization, unless and until such organization: recognizes Israel's right to exist; renounces the use of terrorism; dismantles and disarms militias and instruments of terror; and recognizes and accepts all previous agreements and understandings between the State of Israel and the Palestinian Authority.

## Conclusion

The United States has made clear that it expects any newly formed Palestinian government to recognize Israel, commit to nonviolence, and accept prior commitments in the peace process, including the Roadmap. But the United States has limited points of leverage, each of which likely will have varying degrees of utility, to influence Hamas to act in accordance with those expectations. In the end, it will largely be left to the Palestinian people themselves to demand of their government a behavior that is consistent with international expectations, if they wish to join the community of nations that seeks to advance its interests through peaceful negotiation rather than by terrorism.

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<sup>50</sup> S. 2370, § 5.

<sup>51</sup> S. 2370, § 6.

<sup>52</sup> S. 2370, § 7.